

WEST VIRGINIA INFORMATIONAL LETTER
INSURANCE COMMISSIONER

No. 13
October, 1982

UNEARNED PREMIUM REFUNDS
(Senate Bill 559)

As a result of Senate Bill 559, after September 1, 1981, prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction, repayable by its original terms over a period of greater than thirty-six (36) months, shall require a rebate of the unearned portion of finance charges calculated according to the actuarial method, as defined by the Banking Commissioner.

Banking Commissioner Phyllis Arnold has defined the actuarial method to be used in such computation as follows:

"Actuarial method" means the method, defined by rules adopted by the commissioner, of allocating payments made on a debt between principal or amount financed and loan finance charge or sales finance charge pursuant to which a payment is applied first to the accumulated loan finance charge or sales finance charge and the balance is applied to the unpaid principal or unpaid amount financed.

The actuarial method under West Virginia law is a basic computation of principal X rate X time. Because West Virginia law prohibits the capitalization of accrued and unpaid finance charges, the United States Rule method is incorporated in this regulation. The United States Rule method means that at the end of each payment period the unpaid balance of the amount financed is increased by the finance charge earned during that payment period and is decreased by the payment made at the end of that payment period. If the payment is less than the finance charge earned, the adjustment of the unpaid balance of the amount financed is postponed until the end of the next payment period. If then the sum of the two payments is still less than the total earned finance charge for the two payment periods, the adjustment of the unpaid balance of the amount financed is postponed still another payment period, and so forth.

Additionally, the West Virginia Consumer Credit and Protection Act provides that a creditor may provide "reasonable" insurance on the life and earning capacity of any consumer obligated on the consumer credit sale or consumer loan, and "reasonable" insurance on real or personal property offered as security or vendors or creditors single interest insurance.

It has come to the attention of the Insurance Commissioner that some insurers writing credit insurance in the State of West Virginia intend, in the event of prepayment of such credit sale or loan, to calculate the refund of unearned premium on such insurance by the method known as the "Rule of 78s."

The use of such method is hereby declared to be "unreasonable" where the credit sale or loan which gave rise to the insurance is to be subject to the "actuarial" or any other method of calculating the unearned portion of finance charge to be rebated in the event of prepayment which would result in a greater amount to be returned to the consumer than would the use of the "Rule of 78s" in such calculation.

Consequently, all insurers must calculate the unearned premium to be refunded in the event of prepayment by a method which will be at least as favorable to the consumer as the method used in calculating the rebate of the unearned portion of finance charge on such credit sale or loan.

Insurers must be in compliance with the above guidelines by April 1, 1982; provided, however, that refunds issued after September 1, 1981, which are not in compliance with these guidelines must be recalculated before April 1, 1982, and any difference in refund amount must be returned to the consumer by that date.

Additionally, by April 1, 1982, insurers must certify in writing to the Rates and Forms Division of the West Virginia Insurance Department, that they are in compliance with these guidelines.

Richard G. Shaw
Insurance Commissioner